IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

S.B. Criminal Revision Petition No.71/1994.
(Bhinya Ram & Ors. Vs. State of Rajasthan)

DATE OF ORDER : March 09, 2007

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. Srikant Verma for
Mr. M.K. Garg, for the petitioners.
Mr. J.P.S. Choudhary, P.P. for the State.

BY THE COURT :

The instant revision petition has been filed by the petitioners challenging the judgment dated 22.08.1985 passed by the learned Munsif & Judicial Magistrate First Class, Padampur in Criminal Case No.41/83 by which the petitioners were convicted and sentenced, (i) for offence under Section 457 I.P.C. to suffer rigorous imprisonment for a term of one year

and pay a fine of Rs.500/-, in default of payment of fine to further undergo rigorous imprisonment for six months and (ii) for offence under Section 354, I.P.C. to suffer rigorous imprisonment for six months. In appeal against the said judgment, the learned Addl. Sessions Judge No.1, Sri Ganganagar Camp at Sri Karanpur vide judgment dated 26.02.1994 maintained the conviction and sentences awarded by the trial Court. Both these judgments are under challenge in the present revision petition.

According to the facts of the case narrated in the petition, a FIR was filed on 28.10.1982 by complainant Smt. Vidya Devi wherein it was stated that her husband is of unsound mind and he is missing from last one month. She is having two children and they reside with her at home. On 21.10.1982, in the night at about 9 or 9.30 p.m. all of a sudden two persons entered in her house. Out of them; one was Bhinya Ram and; second was Chanan Singh - both the present petitioners. Both of them inflicted stick blow and fist blow on her person. They wanted to commit rate upon her. Upon shouting, Kana Ram and Brij Lal came there and her son Rajendra also woke up. Thereafter, both the persons ray away from the place of occurrence. Upon this incident, after usual investigation, the police filed challan in the Court against the petitioners for offences under Sections 354 and 457, I.P.C. Thereafter the trial commenced

and was concluded in conviction of the petitioners as indicated above. The appellate court also upheld the judgment passed by trial court.

It is vehemently contended by Mr. Srikant Verma, learned counsel appearing on behalf of petitioners that both the judgments passed by courts below are erroneous and deserves to be quashed. He also argued certain points including the point of delay in filing FIR and absence of medical evidence.

I have perused both the judgments passed by courts below. Both the grounds raised herein by the learned counsel for the petitioners were considered in detail by the learned trial court while appreciating the evidence on record and the circumstances in which the occurrence took place.

Learned counsel for the petitioners vehemently argued that incident took place in the year 1982 and the petitioners have suffered the mental agony of the criminal case against them as well as financial burden during the course of investigation and trial. The petitioners have already remained behind bars from the date of judgment i.e. 26.2.1994 till their sentence was suspended and they were released on bail by the order of this Court on 5.3.1994. Learned counsel for the petitioners vehemently argued that in the present case the

petitioners were entitled to the benefit of probation since it was their first offence but the trial Court committed serious error in refusing to grant benefit of probation.

In my opinion, the finding arrived at by the trial court as well as appellate court does not require any interference. However, I find force in the prayer made by the learned counsel for the petitioners that the substantive sentence awarded to the petitioners may be reduced to the period of imprisonment already undergone by them.

In the facts and circumstances of the case, in view of the fact that the incident took place almost 25 years ago and the petitioners are on bail since 05.03.1994, it is just and proper to reduce the substantive sentence awarded to the petitioners to the period of imprisonment already undergone by the petitioners, however, the amount of fine under Section 457, I.P.C. requires to be enhanced from Rs.500/- to Rs.7,500/- for both the petitioners.

Consequently, this revision petition is partly allowed. The substantive sentence awarded to the petitioners is reduced to the period of imprisonment already undergone by the petitioners, however, the amount of fine under Sections 457 and 354, I.P.C. is enhanced from Rs.500/- to Rs.7,500/-

for both the petitioners, payable to the complainant. The said enhanced amount of fine shall be deposited by the petitioners within a period of three months from the date of this order and shall be paid to the complainant forthwith. In default of payment of the amount of fine within three months, the petitioners shall suffer imprisonment as ordered by the trial Court. The impugned judgments stand modified to the extent as aforesaid.

(Gopal Krishan Vyas) J.

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